

Call to Order:

The meeting was called to order at 7:32 p.m. Present were Chair, Joan Duff, members Vincent Chiozzi, Jay Doherty, Eric Macaux, and associate member Zach Bergeron; also present were Paul Materazzo, Director of Planning and Jacki Byerley, Planner.

Balmoral Spa:

Paul Finger of Paul Finger Associates gave an update of a conceptual plan to renovate the Balmoral Spa Building on North Main Street. The owner of the building, Tony Buxton, would like to do some major upgrades to the structure and add creative uses from the current office space. When complete, the lowest level of the building, which is slightly below grade, would be a spa, the first level would be a combination of restaurant and retail use, the second level a boutique hotel with twelve rooms, and the top level would be a conference/function room with a full kitchen. The top level has previously been used for conference space, and they would like to improve this level and potentially add some terraces overlooking the river. In the future, there is a potential for the development of a river walk with a bridge that could connect to the Town athletic fields. Mr. Finger reviewed the options available to meet parking space requirements for the build out. An underground garage could be built under the existing parking lot which would create 74 new parking spaces. An existing sewer line would need to be relocated for this, but the engineering department has already laid out conditions for this relocation. The parking lot would be pushed closer to Main Street, which would open up an area for a public gathering space, river walk and potentially a boat landing. The applicant is also willing to clean up the mechanical equipment from the river and repair the river bank. The building is a 58,000 s.f. office building that is preexisting nonconforming with 54 less parking spaces than required. Based on revised parking regulations, at maximum build out, the building would need 183 parking spaces. A parking demand study completed by Ken Cram, traffic consultant, shows that the parking garage and surface parking would provide sufficient parking except between the hours of 4 p.m. and 6 p.m., if the conference space is in use. According to the study, maximum parking demand is 167 spaces, and 153 spaces can be provided on site, leaving the building short by 14 spaces. Mr. Finger let the Board know that this plan is very preliminary and his client is asking them for their thoughts on the vision so that he knows if it is worth taking the next steps to move forward with the project. Ms. Byerley questioned Mr. Finger how many parking spaces were designated for the proposed restaurant. He replied that the restaurant would take up approximately half of the first floor, so based on the square footage, 39 spaces, 1 for every 500 s.f. and ½ for each employee. Mr. Materazzo asked if on street parking was included as part of the analysis. Mr. Finger responded that it was not because the Planning Board had previously requested that he avoid making a major demand on the public parking. There is a small public parking lot across the side street and parking is available on adjacent streets. Ms. Byerley asked Mr. Finger if this project would fall in to the criteria to apply for a special permit for reduction of parking. Mr. Finger responded that they plan on applying for a special permit. Some of the proposed uses would be less demanding on parking than the current nonconforming use. For those uses that would increase demand, they would have to show that they can add the additional off street parking. He anticipates having to do a floor-b- floor analysis to see if the applicant and the Board can come to agreement. Ms. Byerley asked what sort of renovation will be done to the outside of the building. Mr. Finger said that it would be a complete interior renovation with emphasis being placed on the architectural work for historical recreation. A portico share will be added to the south side of the structure and there would be a complete renovation of the center

Balmoral Spa (cont'd):

court to open it up. The project would go to the Historic Preservation Commission as well as the Design Review Board. There are no setback issues, but it will be within the riverfront so they have met with Conservation and have had positive responses due to the river walk aspect. Mr. Doherty asked how big the conference space is. Mr. Finger answered that it holds approximately 350 people if the space is maximized. Ms. Byerley asked how deep the garage would have to be. Mr. Finger answered 12 ft, and it will be below the river elevation so it will be water tight. Ms. Duff asked if shared parking is often taken into account. Ms. Byerley answered that it is taken into account in the GB District, especially in the Main Street area. Mr. Doherty noted that they seem to be very aggressive in trying to meet the parking requirements and he is happy that they are trying to improve that building and the area.

Minutes:

On a motion by Mr. Doherty, seconded by Mr. Macaux, the Board voted to approve the minutes of the September 11, 2012, October 9, 2012 and November 13, 2012 meetings as submitted.

Vote: Unanimous (4-0)

Crystal Circle Bond Reduction:

Ms. Byerley informed the Board that the original bond was established at \$117,300. A significant amount of work has been done on site and they will most likely be coming in for street acceptance at the next Town Meeting. DPW is recommending that the Board reduce the bond to \$47,600.

On a motion by Mr. Macaux, seconded by Mr. Doherty the Board moved to approve the reduction of the Performance Guarantee to secure the proper construction and completion of the services and ways to \$47,600.00 as recommended by the Department of Public Works in a memo dated December 5, 2012. **Vote:** Unanimous (4-0)

Katsikis Estates:

The Board opened the public hearings that were continued from the November 27, 2012 meeting on an application by James and Tasia Katsikis for a Definitive Subdivision named Katsikis Estates as prepared by DK Engineering Associates, Inc. for a two (2) lot subdivision located at 11 Ballardvale Road. Dan Koravos of D.K. Engineering Associates, Inc, representing the applicants, gave an overview of the changes that were made to the plan based on comments received from the departments at the IDR, as well as comments received from Janet Bernardo, the peer reviewer. The proposed building for Lot 1 has been moved a couple feet based on the wetlands delineation. The DPW commented that, on the detail, the infiltration trench is stepped down, and questioned that there is no impervious barrier between the steps to prevent the water from running downhill. Mr. Koravos stated that if necessary, a sheet of plastic can be put at the end of the steps to keep water from shifting down to the lower trench. Lt. Pomerleau has stated to Mr. Koravos that the Fire Department does not have an issue with the fire hydrant or the width of the roadway. Janet Bernardo's (P.E., ESS Group) comments pertained to the earth disturbance, but the project is below any thresholds to have to comply with regulations. Mr. Byerley asked Mr. Koravos to explain how the house has shifted. Mr. Koravos stated that the building was shifted 2-3 feet to the east in order to meet the setbacks from the new wetland line. This leaves 7-8 ft from the setback line on the east side. Ms. Bernardo, a technical peer reviewer

Katsikis Estates (cont'd):

hired by the Board for the stormwater management of the subdivision, gave an overview of the peer review process. She explained that new stormwater will be created from the home on Lot 1 covering ground and causing a new impervious area. The plan calls for three areas of stormwater control to mitigate this new stormwater: the patio with permeable pavers, the infiltration system inside the cul-de-sac of the right of way and the infiltration trench along the right of way. This project will alter less than one acre of land, so they do not need to prove that that have met the stormwater regulations. Ms. Bernardo noted that the soil calculations and design have been verified as appropriate for the site. On the first submittal, she questioned their acreage of earth disturbance, but Mr. Koravos was able to prove that less than one acre will be disturbed. Ms. Bernardo has found that the design complies with the subdivision rules and regulations, and it is her objective opinion that the design handles the stormwater appropriately, the stormwater will continue to flow in the same manner as it does now, and there should not be an increase in runoff in any direction. Mr. Doherty asked Ms. Bernardo how the runoff will affect 15 Ballardvale Road, an abutting property whose owner has previously expressed concern about increased runoff. Ms. Bernardo explained that the trench located along the roadway should capture the runoff coming off of the site. Ms. Duff asked how this would affect the current conditions of groundwater pooling at the corner of 15 Ballardvale, and causing cracks in the roadway. Ms. Bernardo answered that the design will not fix any current water issues, but it should not make these issues any worse. Deborah Properzio, 15 Ballardvale Road, asked what the recourse is if the runoff or pooling on her property did increase. Ms. Bernardo explained that if the system is built as it is designed; the runoff should not be increased. She encouraged Ms. Properzio to document the current conditions on her property, so if there is an increase, she will have documentation. Ms. Byerley also noted that the Town requires as-built drawings for the project and a professional engineer will verify that the infiltration systems were built as designed. Ms. Properzio asked for clarification on how long the infiltration trench along the roadway will be. Mr. Koravos answered that they have changed the trench to be wider and shorter; it will now be 120 ft long. Ms. Duff asked if the change will still allow the trench to meet the stormwater demand. Ms. Bernardo answered that it is still sized adequately to handle the watershed that will be going to it. Ms. Byerley noted that the ESS Group's comments are based on the revised plans. Ms. Properzio asked how far the infiltration trench will be from the property line. Mr. Koravos answered that the right of way is 15 ft from the property line and the infiltration trench is immediately next to the right of way. Ms. Properzio asked what the Town's responsibilities are in regards to maintaining this right of way. Ms. Byerley answered that it will be a private way and the property owner will be responsible for repairs and maintenance, as well as snow removal and bringing their trash down to Ballardvale Road. Ms. Properzio asked about the sight distance, specifically the 75 ft triangle, because the 75 ft would encompass her property and trees would have to be removed to meet that distance. Ms. Byerley let Ms. Properzio know that Chuck Edgerly, the police safety officer, has already reviewed the site and has found that the sight distance is adequate for getting out of the driveway and no trees will need to be removed. Ms. Properzio then voiced concern that in the construction of the trench, roots from trees on her property will be damaged causing trees to die and creating a hazard. She requested that Mr. Koravos walk the boundary with her and determine what trees should be removed for safety reasons. Mr. Koravos said that it would not be a problem because the applicant wants to work with the neighbors to make sure that there are no issues. Mr. Koravos asked the Board to continue this hearing until after the first hearing with the Conservation Commission on January

Katsikis Estates (cont'd):

3rd, so that if any changes are required by the Commission, he will not have to go back and forth with the Board. Mr. Koravos noted that before the next meeting he will respond to the DPW's comment on the impervious barrier between the steps in the trench and forward his response to Ms. Bernardo. He will also have the surveyors contact Ms. Properzio to let her know when they will be about to mark where the trench will be, so that she can get a better idea of where it will be on the property.

On a motion by Mr. Macaux, seconded by Mr. Doherty, the Board moved to continue the public hearings on an application by James and Tasia Katsikis for a Definitive Subdivision and Earth Movement Special Permit named Katsikis Estates as prepared by DK Engineering Associates, Inc. for a six (2) lot subdivision located at 11 Ballardvale Road to January 22, 2013 at 7:30 p.m.
Vote: Unanimous (4-0)

Improvement of a Private Way:**Off County Road:**

Ms. Duff opened the continued public meeting on Off County Road. Bill Macleod, of Andover Consultants, Inc., the engineer representing the applicant, informed the Board that he has revised the plan based on the comments received from the DPW at the IDR. Ms. Byerley confirmed that Mr. Macleod revised the plans. The turnaround area is going to be located in the easement over Lot 2. The DPW is satisfied with this request and has suggested that a "No Parking" sign be placed in that area. The private way will be owned by a homeowners association made up of the existing Lot that is Map 83 Lot 21, and the new Lot that will be created. The water service will now have copper pipes off of the main. The sewage and drainage systems will be owned and maintained by the homeowners association, the connections to the sewer at County Road will be owned by the Town. The operation and maintenance plan has been submitted and reviewed by the DPW. The utilities will all be connected to the existing overhead utilities in County Road and the applicant will work with the gas company to bring gas in. DPW has stated that all of their comments have been satisfied. Ms. Byerley asked Mr. Macleod who the easement for the turnaround would benefit. Mr. Macleod answered that it would belong to the homeowners association, but Lot 1 has rights to use it because their property fronts on the road. Mr. Doherty asked if the HOA documents are available for the Board to review. Ms. Byerley answered that she just received a draft of the HOA by email, that she has not read yet, but she has suggested conditions should the Board agree to the waivers. These conditions are that the Mylar and the ANR Plan reflect the waivers being granted and that that the homeowners association book and page number also be placed on the Mylars. The Planning Division will review the Mylars for these notes prior to the endorsement and recording. The homeowners association documents were being written based off of a template from the Town. Mr. Bergeron asked if the name of the road should be placed on the plan. Ms. Byerley stated that it does not need to be on the plan as long as the plan references the correct Map and Lot numbers. Mr. Macleod stated that he felt it would be a good idea to have the name of the road on the plan, since it will be the plan of record for the conveyance of lots in the future. Ms. Byerley noted that the Board of Health has also requested that the sewer and road drainage with sewer stubs being extended to the lots be installed prior to issuance of any building permit.

Off County Road (cont'd):

On a motion by Mr. Macaux seconded by Mr. Doherty, the Board found that strict compliance with Section 3.B.e.1 & 2 would cause unique and undue hardship and granting the waivers are in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law. In granting the waivers the Board requires that the homeowners association be recorded which shall include ownership and maintenance of the sewer main and drainage system and the Operation and Maintenance Plan; the notes and waiver requests be added to the plan prior to endorsement of the Approval Not Required Plan and that the sewer and road drainage with sewer stubs being extended to the lots to be served be installed prior to issuance of any building permit.

Vote: Unanimous (4-0)

24 Filter Bed Road:

Ms. Byerley informed the Board that this is a very similar situation as Off County Road, the difference being that Liberty Street is constructed to a certain portion and there is an existing house at 20 Liberty Street. Originally a possible turnaround was to be located in a driveway for the proposed house. The turnaround has now been placed between 20 Liberty Street and the newer lot using an easement. Bill Macleod, of Andover Consultants, Inc., the engineer representing the applicant, informed the Board that the easement will be granted to the Town because the Town owns Filter Bed Road. The residents of 20 Liberty Street are pleased with this turnaround easement because it will allow them to dissolve a 20 ft utility easement that goes through their backyard allowing access to the lot on Filter Bed Road. The hydrant as it is located on the plans is acceptable with the Fire Department. Mr. Macleod has agreed to extend the pavement to include the intersection of Liberty and Sutherland Street per the request of DPW. Ms. Duff asked if there would be provisions for "No Parking" signs in the turnaround area. Ms. Byerley explained that because the turnaround will be in an easement, and not in a driveway, no provisions for signage have been requested.

On a motion by Mr. Macaux seconded by Mr. Doherty, the Board found that strict compliance with Section 3.B.e.1 & 2 would cause unique and undue hardship and granting the waivers are in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law. In granting the waivers the Board requires that the waiver requests be added to the plan prior to endorsement of the Approval Not Required Plan and that the sewer and road drainage with sewer stubs being extended to the lot to be served be installed prior to issuance of any building permit. **Vote:** Unanimous (4-0)

Town Meeting Article – Definitions of Restaurant, Fast Food and Retail Sales:

Ms. Byerley reminded the Board that at the last Town Meeting they sponsored an article to change the requirement that a sit down restaurant that also provides takeout service to go before the Zoning Board of Appeals for a Special Permit for that service. The article called for takeout to be allowed at sit down restaurants as an accessory use. Ms. Byerley is now asking the Board to change the definition of fast-food, because any food establishment that is not a sit-down restaurant is now considered fast-food. This would include a bakery, cheese shop, ice cream shop, etc. All of these establishments currently have to go through the Zoning Board of Appeals process which can take months, and can open up the whole project to an appeal. Ms. Byerley discussed this with the Inspector of Buildings and the Board of Health and her suggestion is to treat the smaller establishments like bakeries as retail sales, which is similar to how the Board of

Town Meeting Article (cont'd):

Health treats them. In order for these establishments to be treated as retail sales, changes would need to be made to the definitions of Restaurant, Fast-Food and Retail Sales. Ms. Byerley is suggesting that the definition of Restaurant, Fast-Food be, "An establishment whose primary business is the sale of a complete meal to be sold in whole or in pieces for consumption on or off the premises which is: (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; and (b) available upon a short waiting time; and (c) packaged or presented in such a manner that it can readily be consumed outside the premises where it is purchased." This changes the definition from the general sale of "food and drink" to "a complete meal to be sold in whole or in pieces." If a restaurant serves a protein, a starch, a vegetable and a drink, even if only a drink is purchased, it would be a fast-food restaurant. The retail sales establishment definition would be changed to, "A facility selling goods which can include the sale of food and drink, but not otherwise specifically listed in the Table of Use Regulations; including the sale of such merchandise other than at retail if incidental to the operation of a retail establishment, including processing and/or assembly of merchandise when clearly accessory to the sale of such merchandise on the premises." Mr. Bergeron asked if the complete meal definition is elsewhere, and Ms. Byerley answered it was not. He then asked if it would be subject to interpretation and Ms. Byerley answered that everything is subject to interpretation. Mr. Doherty asked what a store like Whole Foods comes under since it sells whole meals. Ms. Byerley answered that it is considered a grocery store because its main function is a grocery store and the prepared meals are an accessory use. Mr. Bergeron questioned what Starbucks falls under. Ms. Byerley answered that Starbucks currently falls under fast food, but with this change would fall under retail sales. Ms. Duff asked what Dish would be. Ms. Byerley answered that it sells a complete meal, so it would be fast food. Ms. Byerley noted that fast food is not allowed in the mixed-use district, and Shawsheen Plaza is in the mixed-use district. This would open up Shawsheen and other areas for establishments that sell food and drink. Ms. Byerley informed the Board that if they approve of this article, she will then send it to Town Counsel, and it will then go to all other departments for comment, as well as the different Boards and the Economic Development Council.

Mr. Macaux made a motion seconded by Mr. Bergeron that the Board submit a warrant article for the 2013 Annual Town Meeting to revise the Definitions of Retail Sales Establishment and Restaurant, Fast Food. **Vote:** Unanimous (4-0)

Adjournment: The meeting was adjourned at 8:52 p.m.